

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CHARLOTTE THOMAS,

Civil Action No.: 12 CV 2854

Plaintiff,

ANSWER TO COMPLAINT

- against -

COACH USA TOUR INC. and
TWIN AMERICA, LLC.,

Defendants.
-----X

Defendants COACH USA TOUR INC. and TWIN AMERICA, LLC., by and through their attorneys, GALLO VITUCCI KLAR LLP, answering Plaintiff's Complaint, respectfully state and allege, upon information and belief as follows:

1. Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "1" of the Complaint.
2. Deny each and every allegation contained in paragraphs "2", "3", "5", "6", "7", "8", "9" and "10" of the Complaint.
3. Deny each and every allegation contained in paragraph "4" of the Complaint, but admit that TWIN AMERICA, LLC. operates buses in New York, New York.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

4. Pursuant to CPLR 4545(c), if it be determined or established that Plaintiff has received or with reasonable certainty shall receive the cost of medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss, and that the same shall be replaced or indemnified, in whole or in part from any collateral source such as insurance (except for life insurance), social security (except for those benefits provided under title XVIII of the Social Security ACT), workers' compensation or employee benefit programs (except such

collateral source entitled by law to liens against any recovery of the Plaintiff), then and in that event, the answering Defendants hereby plead in mitigation of damages the assessment of any such cost or expense as a collateral source in reduction of the amount of the award by such replacement or indemnification, minus an amount equal to the premiums paid by the Plaintiff for such benefits for the two year period immediately proceeding the accrual of this action and minus an amount equal to the projected future cost to the Plaintiff of maintaining such benefits and as otherwise provided in CPLR 4545(c).

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

5. Pursuant to CPLR Article 16, the liability of the Defendants, if any, to the Plaintiff for non-economic loss is limited to their equitable share, determined in accordance with the relative culpability of all persons or entities contributing to the total liability for non-economic loss, including named parties and others over whom Plaintiff could have obtained personal jurisdiction with due diligence.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

6. A. The accident described in the Plaintiff's Complaint did not result in a "serious injury" to the Plaintiff so defined in and by Section 5102 (d) of the Insurance Law of the State of New York. By reason of the premises in Section 5104 of the Insurance Law of the State of New York, Plaintiff has no right to institute, maintain or prosecute this action and is barred from doing so.

B. The Plaintiff did not sustain a serious injury as defined by Section 5102 (d) of the Insurance Law of the State of New York, and her exclusive remedy therefore is confined and limited to the benefits and provisions of Article 51 of the Insurance Law of the State of New York.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

7. This action may not be maintained because of Plaintiff's failure to join all necessary parties in this action, and in the absence of person(s) who should be a party this action cannot proceed.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

8. The Plaintiff failed to mitigate, obviate, diminish or otherwise act to lessen or reduce the injuries, damages and disabilities alleged in the Complaint.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

9. The Complaint fails to state a cause of action, cognizable in equity or law against these answering Defendants and must therefore be dismissed.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

10. Any damages which may have been sustained by the Plaintiff was contributed to in whole or in part by the culpable conduct of third parties not under the control of answering Defendants.

WHEREFORE, Defendants COACH USA TOUR INC. and TWIN AMERICA, LLC. demand judgment dismissing the Complaint, together with attorneys' fees, costs and disbursements of this action.

Dated: New York, New York
April 23, 2012

Respectfully submitted,

GALLO VITUCCI KLAR LLP

By:



HEATHER C. RAGONE, ESQ. (8757)
Counsel for Defendants
90 Broad Street, 3rd Floor
New York, New York 10004
(212) 683-7100
File: CHC-2012-7

TO:

CRAIG CARSON, ESQ.
Attorneys for Plaintiff
95 Wyndshire Lane
Rochester, New York 14626

ATTORNEY VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

The undersigned affirms the following statement to be true under penalties of perjury pursuant to Rule 2106 of the Civil Practice Law and Rules.

That she is a member of the firm of GALLO VITUCCI KLAR LLP, attorneys for Defendants COACH USA TOUR INC. and TWIN AMERICA, LLC.

That she has read the foregoing instrument and knows the contents thereof, and, that the same is true to the knowledge of your deponent, except as to those matters therein alleged on information and belief, and that as to those matters she believes them to be true.

That the reason why this Verification is made by your deponent and not by the Defendants are that said parties resides outside the county in which your deponent maintains her office.

That the source of your deponent's information and the grounds of her belief as to all matters therein alleged upon information and belief is reports from and communications had with said parties.

Dated: New York, New York
April 23, 2012



HEATHER C. RAGONE (8757)

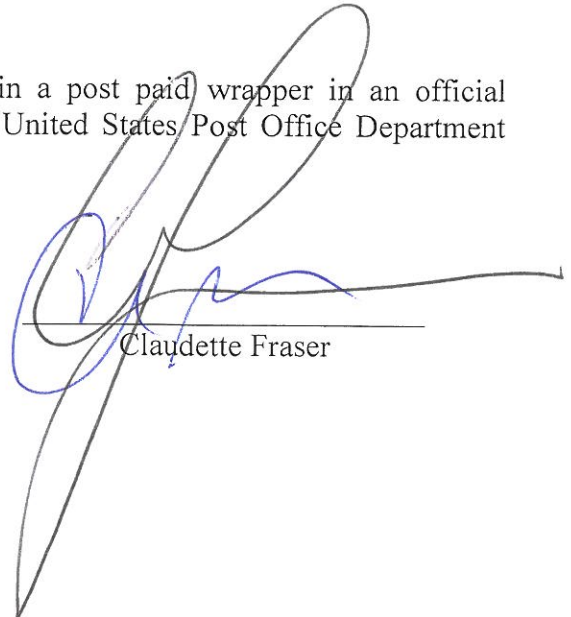
AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

The undersigned being duly sworn, deposes and says that she is not a party to this action, is over the age of 18 years and resides in the County of Kings. That on the 30th day of April, 2012, she served the within **ANSWER TO COMPLAINT** upon:

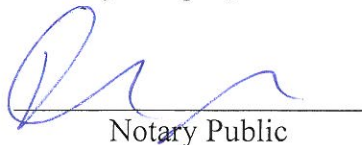
CRAIG CARSON, ESQ.
Attorneys for Plaintiff
95 Wyndshire Lane
Rochester, New York 14626

by depositing a true copy of same securely enclosed in a post paid wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.



Claudette Fraser

Sworn to before me this
30th day of April, 2012



Notary Public

Daniel Mevorach
Notary Public, State of New York
No. 02ME6163187
Qualified in Nassau County
Commission Expires March 19, 2015

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ANSWER TO COMPLAINT

GALLO VITUCCI KLAR LLP
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